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18 ARAMARK SERVICES, INC.

19
20 UNITED STATES DISTRICT COURT
21 NORTHERN DISTRICT OF CALIFORNIA

22 RUBEN MENDOZA, individually, and on
23 behalf of all others similarly situated,

24 Case No. _____

25 **NOTICE OF REMOVAL OF ACTION**

26 Plaintiffs,

27 vs.

28 ARAMARK SERVICES, INC., and DOES 1
through 10,

Defendants.

1 **TO THE CLERK OF THE NORTHERN DISTRICT OF CALIFORNIA AND PLAINTIFF**
 2 **AND HIS COUNSEL OF RECORD:**

3 PLEASE TAKE NOTICE THAT Defendant Aramark Services, Inc. (“Aramark” or
 4 “Defendant”), by and through its counsel, removes the above-entitled action to this Court from
 5 the Superior Court of the State of California, County of Alameda pursuant to 28 U.S.C. §§ 1331,
 6 1441, and 1446. This removal is based on the following grounds:

7 **THE PLEADINGS AND SERVICE**

8 1. On October 7, 2015, Plaintiff Ruben Mendoza (“Mendoza” or “Plaintiff”), filed an
 9 unverified putative class action complaint for damages in the Superior Court of the State of
 10 California, County of Alameda, entitled *Ruben Mendoza, individually, and on behalf of all others*
 11 *similarly situated v. Aramark Services, Inc.; and DOES 1 through 10*, Case No. RG15788780 (the
 12 “Complaint”).

13 2. Plaintiff served the Complaint, summons, and related documents attached as
 14 Exhibit A on Aramark through its registered statutory agent in California on October 9, 2015.
 15 Plaintiff also served the Notice of Hearing attached as Exhibit B on Aramark through its
 16 registered statutory agent in California on or about November 3, 2015.

17 3. According to the Superior Court’s docket, Plaintiff filed a proof of service of
 18 summons with the Court on October 28, 2015, which has not yet been served on Aramark. A
 19 copy of the proof of service filed on October 28, 2015 is attached as Exhibit C. No pleadings or
 20 papers have been filed, served, or received by Aramark in this action other than the documents
 21 attached as Exhibits A-C.

22 4. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446 because it is
 23 filed within thirty (30) days of the date on which Aramark was served with the Complaint. No
 24 previous Notice of Removal has been filed or made with this Court for the relief sought herein.

25 5. Because Plaintiff filed the Complaint in the Superior Court of California, County
 26 of Alameda, removal to the United States District Court for the Northern District of California is
 27 appropriate under 28 U.S.C. § 1441(a).

1 6. This action is a civil action over which this Court has original jurisdiction under 28
 2 U.S.C. § 1331 and 29 U.S.C. § 1132(e), and which may be removed to this Court pursuant to 28
 3 U.S.C. § 1441(b), because the Complaint's First Cause of Action and Sixth Cause of Action as
 4 related to unlawful deductions implicate the exclusive remedial scheme imposed by the Employee
 5 Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. §§ 1001, *et seq.*

6 7. As required under 28 U.S.C. § 1446(d), Defendant will give notice of this removal
 7 to Plaintiff through his attorneys of record. Defendant will also file a copy of this Notice with the
 8 clerk of the Superior Court of California for the County of Alameda where the action is pending.

9 **BACKGROUND AND SUMMARY OF PLAINTIFF'S CLAIMS**

10 8. Plaintiff's Complaint alleges six causes of action: (1) illegally withholding,
 11 deducting, and diverting wages; (2) failure to pay minimum and overtime wages in violation of
 12 California Labor Code § 1194; (3) California Labor Code § 203 waiting time penalties; (4) breach
 13 of contract based on an alleged failure to pay wages; (5) California Labor Code § 226 wage
 14 statement penalties; and (6) unfair competition in violation of California Business and Professions
 15 Code § 17200, *et seq.*, which includes an allegation related to Plaintiff's unlawful deduction
 16 claim.

17 9. Plaintiff alleges that Aramark requires its employees to undergo an annual
 18 Member Health Assessment, which includes biometric screening and diagnostic tests as well as
 19 filling out a health assessment questionnaire after completing the screening and tests. Compl. ¶ 2.
 20 Plaintiff further alleges that if an employee fails to complete and submit the Member Health
 21 Assessment questionnaire, that Aramark penalizes that employee by deducting \$20 per pay period
 22 from his or her paycheck. *Id.*

23 10. Plaintiff alleges that even though Aramark requires employees to complete the
 24 questionnaire and participate in biometric screening and diagnostic testing, it does not
 25 compensate employees for performing these activities. Compl. ¶ 2.

26 11. Aramark sponsors the Aramark Services, Inc. Wellness Plan (the "Wellness
 27 Plan"), which is a standalone plan under the Aramark, Inc. Welfare Benefits Program (the
 28 "Welfare Wrap Plan"), and is an ERISA welfare benefit plan under 29 U.S.C. § 1002(1)(A).

1 Declaration of Valerie Wandler (“Wandler Decl.”) ¶ 4. Before 2014, the Wellness Plan was a
2 component of the Aramark, Inc. Health Plan, which is also a standalone plan under the Welfare
3 Wrap Plan. *Id.* ¶ 3. Three documents govern the terms and conditions of the Wellness Plan and
4 are considered together to be the Plan document: the Welfare Wrap Plan document, the Summary
5 Plan Description for the Health Plan (pre-2014), and the Benefits Planning and Enrollment Guide
6 for Hourly Employees (“Enrollment Guide”), which is updated annually. *Id.* ¶ 5. Attached as
7 **Exhibits 1 - 11** to the Wandler Decl. are the Wellness Plan Documents applicable to the 2011
8 through 2015 plan years, the years at issue as alleged in Plaintiff’s Complaint.

9 12. Plan terms pertaining to any incentive offered by Aramark for participating in the
10 Wellness Plan, which Plaintiff erroneously alleges amounts to a penalty, are contained in the
11 Enrollment Guide. Wandler Decl., Ex. 3 at pp. 23-24; Ex. 4 at pp. 22-23; Ex. 6 at pp. 24, 27-29;
12 Ex. 9 at pp. 36, 39-40.

ANALYSIS

I. State-Law Claims That Are Completely Preempted by ERISA Satisfy the Standard for Removal and Federal Court Jurisdiction.

13. The federal removal statute, at 28 U.S.C. § 1441(a), provides as follows:

(a) Generally. Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

Federal district courts have “original jurisdiction” for all civil actions “arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. Section 502(e) of ERISA, 29 U.S.C. § 1132(e), provides federal courts with jurisdiction to hear actions arising under ERISA.

24 14. The “well-pleaded complaint rule” generally requires federal question jurisdiction
25 to appear on the face of a plaintiff’s complaint for jurisdiction in federal court to attach. *See Met.*
26 *Life Ins. Co. v. Taylor*, 481 U.S. 58, 63 (1987) (citations omitted). However, complete
27 preemption is an exception to the “well-pleaded complaint” rule – if a state claim falls within the
28 scope of ERISA’s complete preemption doctrine, then removal is proper even if an ERISA claim

1 does not appear on the face of the complaint. *Aetna Health, Inc. v. Davila*, 542 U.S. 200, 209
 2 (2004); *see also Cleghorn v. Blue Shield of Cal.*, 408 F.3d 1222, 1225 (9th Cir. 2005) (holding
 3 that a state law claim comes within the scope of ERISA's civil enforcement scheme when, despite
 4 its state law label, the claim is one to recover or remedy the denial of ERISA benefits).
 5 Accordingly, if a plaintiff's state-law claim is within the scope of Section 502(a) of ERISA, that
 6 claim is completely preempted and, therefore, may be removed to federal court. *Davila*, 542 U.S.
 7 at 209.

8 **II. The First Cause of Action and Sixth Cause of Action as Related to Plaintiff's
 9 Unlawful Deduction Claim Are Completely Preempted by ERISA Section 502(a), 29
 U.S.C. § 1132(a).**

10 15. The two-part analysis set forth by the Supreme Court in *Davila* applies to
 11 determine whether a claim has been completely preempted by ERISA. A claim is completely
 12 preempted if: (1) “an individual, at some point in time, could have brought [the] claim under
 13 ERISA § 502(a)[];” and (2) “where there is no other independent legal duty that is implicated by
 14 a defendant's actions.” *Davila*, 542 U.S. at 210. Both of those factors demonstrates that
 15 Plaintiff's claims are completely preempted by ERISA, and Defendant may properly remove the
 16 Complaint to this Court.

17 **A. Plaintiff Could Have Brought His Claims Under ERISA Section 502(a).**

18 16. The First and Sixth Causes of Action (as related to Plaintiff's unlawful deduction
 19 claim) could have been brought under ERISA § 502(a), 29 U.S.C. § 1132(a). Indeed, in denying
 20 a motion to remand, the Ninth Circuit has held that a claim for restitution of premiums could be
 21 brought under ERISA § 502(a)(3). *Fosson v. Blue Cross and Blue Shield of Montana, Inc.*, 660
 22 F.3d 1102, 1109 (9th Cir. 2011) (finding claim for restitution of premiums completely preempted
 23 by ERISA because it could have been brought under ERISA § 502(a)(3)); *see also Gabriel v.*
 24 *Alaska Elec. Pension Fund*, 773 F.3d 945, 957 (9th Cir. 2014) (recognizing possible monetary
 25 remedy of equitable surcharge under ERISA § 502(a)(3)). In addition, because Plaintiff's
 26 premium deductions were authorized under the terms of the Wellness Plan, any challenge to those
 27 deductions could be pursued as a claim under ERISA § 502(a)(1)(B) to enforce or clarify his
 28 rights under the Wellness Plan's terms. *See, e.g., Gomez v. Cal. Physicians Serv.*, 299 Fed. Appx.

1 687, 690 (9th Cir. 2008) (finding cause of action seeking to enforce rights under a plan
 2 completely preempted under ERISA § 502(a)(1)(B)); *Noble v. RightChoice Managed Care, Inc.*,
 3 Case No. 15-MD-02617-LHK, Case No. 15-CV-2874-LHK, 2015 U.S. Dist. LEXIS 120917, at
 4 *54-55 (N.D. Cal. Sept. 9, 2015) (holding that claims seeking partial refund of premiums
 5 premised on obligations under an ERISA plan were completely preempted under 502(a)(1)(B)).

6 **B. The Only Legal Duties Implicated in the First Cause of Action and Sixth
 7 Cause of Action as Related to Plaintiff's Unlawful Deduction Claim Are
 8 Those Arising out of the Plan.**

9 17. Plaintiff's Complaint satisfies the second prong of the *Davila* analysis because
 10 “there is no independent legal duty” apart from those related to the Plan, an ERISA-governed
 11 plan. *Davila*, 542 U.S. at 210.

12 18. To adjudicate Plaintiff's unlawful deduction claim as alleged in the First and Sixth
 13 Causes of Action, the Court would necessarily have to refer to and interpret the terms of the Plan
 14 applicable to each plan year at issue. The foundation for adjudicating the claims will be the
 15 Court's interpretation of the Plan, meaning that but for the Plan there would not be another
 16 independent legal duty that supports Plaintiff's claims. *See, e.g., AT Armiger v. Kiewit
 17 Construction Co.*, No. C 10-00271, 2010 U.S. Dist. LEXIS 71663, at *14-15 (N.D. Cal. Mar. 26,
 18 2010) (observing that if the plan did not exist, there would not be an independent legal duty).
 19 Further, Plaintiff alleges that the supposed common questions of law and fact among members of
 20 the putative classes include: whether Aramark had a “policy and/or practice” under which it
 21 allegedly “withheld, deducted or diverted money from the class members' pay on the grounds that
 22 they did not turn in to Defendants a completed Member Health Assessment questionnaire” and
 23 whether Aramark's “policies and/or practices” related to the allegedly unlawful deductions result
 24 in unfair competition practices. *See Compl. ¶¶ 44(a) & (f).* The policies and/or practices to
 25 which Plaintiff refers are plainly embodied in the Wellness Plan document. *Supra*, Paragraph 12.
 26 Thus, the First Cause of Action and Sixth Cause of Action as related to Plaintiff's unlawful
 27 deduction claim are completely preempted by ERISA and removal to federal court is appropriate.
 28

1 **III. It Is Appropriate for this Court to Exercise Supplemental Jurisdiction Over**
 2 **Plaintiff's State-Law Claims.**

3 19. While ERISA preempts only Plaintiff's claims to the extent they involve ERISA-
 4 governed plans, the Court may exercise supplemental jurisdiction over the remainder of the
 5 claims because the alleged underlying facts are the same as those which form the basis for the
 6 federal claims. Therefore, those claims are a part of the same case or controversy. *See* 28 U.S.C.
 7 § 1337(a). In determining whether to extend supplemental jurisdiction over state and common
 8 law claims, courts weigh whether the extension of jurisdiction will serve the principles of judicial
 9 economy, convenience, and fairness to the litigants, and comity to the states. *Carnegie-Mellon*
 10 *Univ. v. Cohill*, 484 U.S. 343, 350 n.7 (1988). Here, because all of Plaintiff's claims "derive from
 11 a common nucleus of operative fact" – i.e., the terms of the Wellness Plan – the claims are such
 12 that they ordinarily would be expected to be tried in one judicial proceeding. *Nishimoto v.*
 13 *Federman-Bachrach & Assocs.*, 903 F.2d 709, 713-14 (9th Cir. 1990) ("[A] district court may
 14 exercise [supplemental] jurisdiction over state law claims arising from a nucleus of operative fact
 15 common to both the state law claims and the ERISA claim."). Thus, it is economically and
 16 judicially efficient for this Court to adjudicate all claims asserted in the Complaint.

17 **CONCLUSION**

18 For the foregoing reasons, Plaintiff's First Cause of Action and Sixth Cause of Action as
 19 related to Plaintiff's unlawful deduction claim are completely preempted by ERISA, and this
 20 Court has jurisdiction to adjudicate the case. Aramark has properly removed the underlying
 21 action to this Court. Further, Aramark respectfully requests that the Court exercise supplemental
 22 jurisdiction over Plaintiff's state-law claims for failure to pay minimum wages and overtime
 23 wages as required by California Labor Code § 1194 and IWC wage orders (Second Cause of
 24 Action), for failure to pay all wages due upon the end of employment (California Labor Code
 25 § 203) (Third Cause of Action), breach of contract to pay wages (Fourth Cause of Action), failure
 26 to furnish itemized statements in violation of California Labor Code § 226 (Fifth Cause of
 27 ///

28 ///

1 Action), and for violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code
2 § 17200, *et seq.*, as related to all claims other than Plaintiff's unlawful deduction claim.

3 Dated: November 9, 2015

MORGAN, LEWIS & BOCKIUS LLP
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6 By /s/ Eric Meckley

7 Eric Meckley
8 Attorneys for Defendant

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